Re the Detention of Muhammad Nasrul Naim bin Mohd Nazim

HIGH COURT (JOHOR BAHRU) — CRIMINAL APPLICATION NO JA-43–41–07 OF 2024
KAN WENG HIN JC
22 OCTOBER 2024

Criminal Procedure — Police investigation — Remand — Whether only investigating officer ('IO') of case had locus to appear before magistrate to seek remand order on arrested person under s 117 Criminal Procedure Code ('CPC') — Whether any other duly-authorised police officer could represent IO at the hearing to seek the remand order — Whether doing so did not prejudice rights of arrested person or detract from purpose of seeking a remand order under s 117 CPC — Whether s 117 CPC should be interpreted purposively and not strictly

The issue in the instant revision application, under s 323 of the Criminal Procedure Code ('the CPC'), was whether the magistrate erred when he refused to grant a remand order against an arrested person ('Nasrul Naim') under s 117 of the CPC on the ground that the police officer who appeared before the magistrate to argue the remand application was not the investigating officer ('IO') of the case. Following Nasrul Naim's arrest on suspicion of making a seditious and defamatory posting on social media against the Regent and Crown Prince of Johor, police applied to the magistrate under s 117 of the CPC to have him remanded pending completion of investigations. As the IO of the case had to attend a briefing before his superiors, he could not attend the remand hearing and arranged for another police officer to represent him. Holding that the phrase 'the police officer making the investigation' in s 117 of the CPC meant that only the IO of the case had locus to appear before him to argue the remand application, the magistrate dismissed the remand application.

Held, allowing the revision application:

(1) If s 117 of the CPC was read strictly to mean that the police officer making the investigation must also be the same person who should appear before the magistrate in the remand proceeding, it could create a dilemma for the police as it was not always possible for the same officer to appear before the magistrate due to the nature of their work, tight deadlines and the need to produce the arrested person before the magistrate within 24 hours of his arrest (see paras 11–12).

(2) The court should adopt the purposive approach in interpreting s 117 of the CPC. The principal purpose of a remand order was to enable police

to extend the detention of the accused to enable investigations to be completed whilst preventing the accused from absconding, interfering with the evidence and/or witnesses, subject to the conditions imposed in s 117. In determining the remand application, the magistrate had to ensure that an equitable balance was achieved between the rights and personal liberty of the accused (who had yet to be proven guilty of any offence) and the equally important public interest to have the perpetrator of an offence apprehended and dealt with in accordance with the law (see paras 13, 15, 23 & 32).

(3) Allowing a police officer who was duly authorised by his superiors to appear in the remand proceeding — as provided for in s 20 of the Police Act — when the original police officer was unable to attend, did not in any way detract from the purpose of s 117 of the CPC nor in any way affect the rights of the accused. The purpose of the remand was still served if another duly-authorised police officer, who had knowledge of the circumstances of the remand and was able to answer the magistrate's queries satisfactorily, appeared before the magistrate at the hearing of the remand application (see paras 30 & 34).

(4) Practice Direction 11 of 2021 issued by the Chief Justice of Malaysia concerning remand proceedings under s 117 of the CPC did not require that the IO of a case must also be the officer who appeared before the magistrate at the hearing of the remand application (see para 19).

[Bahasa Malaysia summary

Isu dalam permohonan semakan di bawah s 323 Kanun Tatacara Jenayah ('KTJ') ini adalah sama ada majistret terkhilaf kerana tidak memberikan perintah reman terhadap orang yang ditangkap ('Nasrul Naim') di bawah s 117 KTJ atas alasan bahawa pegawai polis yang hadir di hadapan majistret untuk permohonan reman itu bukanlah pegawai penyiasat ('PP') kes itu. Berikutan penahanan Nasrul Naim kerana disyaki membuat hantaran menghasut dan memfitnah di media sosial terhadap Pemangku Raja dan Putera Mahkota Johor, pegawai polis memohon kepada majistret di bawah seksyen 117 KTJ untuk direman sementara menunggu siasatan selesai. Oleh kerana PP kes itu terpaksa menghadiri taklimat di hadapan pihak atasannya, dia tidak dapat menghadiri pendengaran permohonan reman dan meminta seorang lagi pegawai polis untuk mewakilinya. Majistret berpendapat bahawa frasa 'pegawai polis yang membuat siasatan' dalam s 117 KTJ bermaksud bahawa hanya PP kes itu yang mempunyai locus untuk hadir di hadapannya untuk pendengaran permohonan reman. Oleh itu, majistret menolak permohonan reman tersebut.

Diputuskan, membenarkan permohonan semakan:

(1) Sekiranya penafsiran s 117 KTJ dibuat dengan tegas bahawa hanya

pegawai polis yang membuat siasatan yang harus hadir di hadapan majistret dalam prosiding permohonan reman, ianya boleh mewujudkan dilema bagi pihak polis kerana tidak mungkin bagi pegawai yang sama hadir di hadapan majistret kerana sifat kerja mereka, tempoh akhir yang singkat dan keperluan untuk membawa orang yang ditangkap di hadapan majistret dalam tempoh 24 jam selepas penahanannya (lihat perenggan 11–12).

(2) Mahkamah harus menggunakan pendekatan bertujuan dalam mentafsir s 117 KTJ. Tujuan utama perintah reman adalah untuk membolehkan polis melanjutkan penahanan tertuduh bagi membolehkan siasatan diselesaikan sambil menghalang tertuduh daripada melarikan diri, mengganggu keterangan dan/atau saksi, tertakluk kepada syarat-syarat yang dikenakan dalam s 117. Dalam menentukan permohonan reman, majistret perlu memastikan bahawa keseimbangan yang saksama dicapai antara hak dan kebebasan peribadi tertuduh (yang masih belum terbukti bersalah atas sebarang kesalahan) dan kepentingan awam yang sama pentingnya untuk menangkap pelaku kesalahan dan ditangani menurut undang-undang (lihat perenggan 13, 15, 23 & 32).

(3) Membenarkan seorang pegawai polis yang diberi kuasa oleh pihak atasannya untuk hadir dalam prosiding permohonan reman — seperti yang diperuntukkan dalam s 20 Akta Polis — dan apabila pegawai polis asal tidak dapat hadir, sama sekali tidak menjejaskan tujuan s 117 KTJ atau dalam apa jua cara menjejaskan hak tertuduh. Reman masih dapat dilaksanakan sekiranya seorang lagi pegawai polis yang diberi kuasa sewajarnya yang mengetahui keadaan-keadaan yang mewajarkan reman dan dapat menjawab pertanyaan majistret dengan memuaskan, hadir di hadapan majistret pada pendengaran permohonan reman (lihat perenggan 30 & 34).

(4) Arahan Amalan No 11 Tahun 2021 yang dikeluarkan oleh Ketua Hakim Negara Malaysia mengenai prosiding permohonan reman di bawah s 117 KTJ tidak menghendaki PP sesuatu kes untuk hadir di hadapan majistret pada pendengaran permohonan reman (lihat perenggan 19).]

Cases referred to

Azinal Sdn Bhd v Jannath Gani & Ors and other appeals [2024] 2 MLJ 526, CA (refd)

Chong Yong Yew v PP [2010] 6 CLJ 938, HC (refd)

DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Anor [2002] 2 MLJ 11, FC (refd)

Detention of R Sivarasa & Ors, Re the [1996] 3 MLJ 611; [1997] 1 CLJ 471, HC (refd)

Hashim bin Saud v Yahaya bin Hashim & Anor [1977] 2 MLJ 116, FC (refd)

Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop [2018] 5 MLJ 141, FC (refd)
Leonard Teoh Hooi Leong v PP [2010] 3 MLJ 373, CA (refd)
Mohamad Ezam bin Mohd Nor, Re [2001] 3 MLJ 372; [2002] 5 CLJ 156, HC (refd)
Quek Qin Long dan lain-lain lwn Pendakwa Raya [2025] 7 MLJ 264, HC (refd)
Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd (Haidar FCJ) [2002] 2 MLJ 11 (FC)
Zaidi bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases [2021] 3 MLJ 759, FC (refd)

Legislation referred to

Criminal Procedure Code ss 28, 110, 110(3), 111, 116, 117, 117(1), (1A), (2), (3), 119, 120, 323, 323(1), Part V
Communications and Multimedia Act 1998 s 232
Federal Constitution art 5
Interpretation Acts 1948 and 1967 s 17A
Penal Code ss 379, 420
Police Act 1967 ss 2, 20
Sedition Act 1948 s 4

Nur Aqilah bt Ahmad Rofaie (Deputy Public Prosecutor, Johor State Legal Advisor's Office) for the applicant.
Not represented for the respondent.

Kan Weng Hin JC:

INTRODUCTION

[1] This is an application for revision under s 323 of the Criminal Procedure Code (Act 593) ('the CPC') against the decision of the magistrate who had refused to grant a remand order under s 117 of the CPC on 22 June 2024.

[2] This revision involves the question of whether the police officer making the investigation should be the same officer who has to appear in front of the magistrate in the remand application as in s 117(1) of the Criminal Procedure Code ('the CPC').

> Section 117 Procedure where investigation cannot be completed within twenty-four hours.
>
> (1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit

to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.

[3] Generally this would not be a problem as the police officer making the investigation would be the same one to appear before the magistrate. However, what if the police officer making the investigation cannot appear for whatever reasons and instead another police officer duly authorised by his superior appears on that day before the magistrate? Should the magistrate decline to entertain the remand application on that basis? This is what happened in this case. The facts of our case are as follows:

(a) a police report was lodged by the complainant regarding a posting on Twitter, now known as 'X' in which the complainant believed to be seditious and defamatory of His Royal Highness Regent and Crown Prince of Johor;

(b) on 22 June 2024 at about 3.40am, the suspect was arrested by the police at Dengkil, Selangor. The case was investigated under s 4 of the Sedition Act and s 232 of the Communications and Multimedia Act 1998. The police officer in charge of investigation was ASP Kathiresh a/p Rajagopal (ASP Kathiresh);

(c) as the police could not complete their investigation within 24 hours, the police had filed an application for detention under s117 CPC. Filed together with the application (encl 1), were the complainant's police report (encl 2), arrest report (encl 3), investigation diary (encl 5), a letter with the heading 'kebenaran membaca reman bagi pihak pegawai penyiasat' (encl 6) and a supporting letter to encl 6 (encl 4). In encl 6, DSP Kamaliddin bin Othman, Ketua Bahagian Siasatan Jenayah, Johor Bahru, had informed the court that ASP Kathiresh had to attend a case briefing at the Crime Investigation Department, Bukit Aman, Kuala Lumpur and would not be able to attend the remand hearing. In his place, ASP Afdhal Muhammad bin Mat Saupi would be attending instead;

(d) the hearing of encl 1 was fixed for the same morning as the arrest. The suspect was brought to Johor Bahru Magistrate Court for the hearing. During the hearing of the remand application, the magistrate did not accept the explanation as in encl 6 and since the police officer in charge of the investigation (ASP Kathiresh) had failed to attend the hearing, he proceeded to dismiss the application. The minutes of the court proceedings are stated as follows:

> ASP: Saya wakil reman sahaja. Pegawai penyiasat ASP Kathiresh a/l Rajagopal
>
> M: ASP hadi sebagai wakil sahaja atau akan ambil alih siasatan/sambung siasatan?

IO: Saya dapat arahan untuk wakil reman sahaja.

M: ASP aware berkenaan kes MT ((JA-43-28/2024 PP lwn Quek Qin Long)) berkenaan isu wakil pegawai penyiasat.

IO: Ya. Faham.

M: Permohonan reman ditolak. Alasan pegawai penyiasat tidak hadir. Alasan yang dikemukakan gagal menjustifikasi perwakilan. Dan wakil yang hadir membacakan reman tidak mengambil alih siasatan/menyambung siasatan.

[4] The need for strict compliance with the provision of s 117 of the CPC has been explained in the off-cited case of *Re the Detention of R Sivarasa & Ors* [1996] 3 MLJ 611; [1997] 1 CLJ 471. Also, the case of *Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop* [2018] 5 MLJ 141 (FC).

[5] Under s 117 of the CPC the duties of the police officer making the investigation are two fold namely:

(a) to immediately transmit to a magistrate a copy of the entries in the diary, particulars of it are set out in s 119 of the CPC; and

(b) at the same time produce the accused before the magistrate. Failure to do either one would mean that the remand application is irregular and the application dismissed by the magistrate.

[6] In hearing of the remand application, the magistrate has to be satisfied that the information and reasons given by the police are valid. In the event that the magistrate has any queries regarding the application, the police officer in attendance before the magistrate will have to answer the queries that may arise from the police diary to the satisfaction of the magistrate. At this stage the magistrate should confine himself to the information as set out in the police diary. Needless to say, mere production of the police diary does not mean that the remand would automatically be ordered.

[7] However, since the words used in s 117 of the CPC is that of the police officer making the investigation, the issue is who is the police officer making the investigation and whether the police officer who is conducting the investigation must also be the same police officer to appear before the magistrate in the hearing of the remand application.

[8] The definition of police officer as defined in s 2 of the Police Act 1967 reads as follows:

'police officer' means any member of the Royal Malaysia Police;

'police district' or 'police division' means any area designated as such by the Inspector General under paragraph 6(b) and unless and until areas are so

designated, means any area constituted or recognised as a police district or police division at the commencement of this Act;'

[9] Though it is not defined, the words 'police officer making an investigation' have appeared in the following sections of the CPC namely:

Section 111 Police officer's power to require attendance of witnesses.

(1) A police officer making an investigation under this Chapter may by order in writing require the attendance before himself of any person who from the information given or otherwise appears to be acquainted with the circumstances of the case, and that person shall attend as so required.

Section 117 Procedure where investigation cannot be completed within twenty-four hours.

(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 28 and there are grounds for believing that the accusation or information is well founded the police officer making the investigation shall immediately transmit to a Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case and shall at the same time produce the accused before the Magistrate.

Section 118 Police officer may require bond for appearance of complainant and witnesses.

(1) If upon a police investigation made under this Chapter it appears to the officer making the investigation that there is sufficient evidence or reasonable ground of suspicion to justify the commencement or continuance of criminal proceedings against any person, the officer shall require the complainant, if any, and so many of the persons who appear to the officer to be acquainted with the circumstances of the case, as he thinks necessary, to execute a bond to appear before a Magistrate's Court therein named and give evidence in the matter of the charge against the accused.

Section 119 Diary of proceedings in investigation,

(1) Every police officer making a police investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary setting forth —

(a) the time at which the order, if any, for investigation reached him;

(b) the time at which he began and closed the investigation;

(c) the place or places visited by him; and

(d) a statement of the circumstances ascertained through his investigation.

Section 120 Report of police officer.

(1) Every police investigation under this Chapter shall be completed without unnecessary delay, and the officer making the investigation shall, unless the offence is of a character which the Public Prosecutor has directed need not be reported to him, submit to the Public Prosecutor a report of his investigation together with the investigation papers in respect of such investigation within one week of the expiry

of the period of three months from the date of the information given under section 107.

(2) Notwithstanding subsection (1), the Public Prosecutor may at any time, regardless that the period of three months mentioned in subsection (1) has not expired, direct the officer making the investigation or the Officer in charge of the Police District to submit to the Public Prosecutor a report in the form in the Second Schedule and the investigation papers in respect of the police investigation.

[10] If one is to look into the context in which the phrase 'police officer making an investigation' in the aforesaid sections are used, it is in Part V with the heading 'Information to Police And Their Power to Investigate'. In Part V, the police officer performs different roles in the process of their investigation and is not limited to one person especially where there may be numerous witnesses or more than one accused involved for example:

(a) police officer making a police investigation may search or cause a search to be made in any place for any documents or other things which are necessary for the investigation (s 116 of the CPC);

(b) police officer making the investigation has to transmit a copy of the police diary to the magistrate for the hearing of the remand proceeding (s 117 of the CPC);

(c) police officer making the investigation to produce the accused before the magistrate within 24 hours from time of arrest (s 117 of the CPC);

(d) police officer making a police investigation shall record the day to day proceedings of the investigation in his diary (s 119 of the CPC); and

(e) police officer making the investigation shall submit a report of his investigation to the public prosecutor (s 120 of the CPC).

[11] Hence if one is to read into s 117 of the CPC to mean that the police officer making the investigation must be the same person to appear before the magistrate in the remand proceeding, it could in certain circumstances create a dilemma for the police as it is not always possible for the same police officer to appear before the magistrate.

[12] Due to the nature of their work, tight deadlines and, especially where the accused must be produced before the magistrate within 24 hours from the time of arrest, the same officer may not be able to appear before the magistrate at the appointed time.

[13] The principal purpose of a remand is to enable the police to extend the detention of the accused to enable completion of the investigation. The detention is necessitated by the need to prevent the accused from absconding,

interfering with the evidence and/or witnesses, subject always to the discretion of the magistrate as in s 117(2) of the CPC. See the case of *Re Mohamad Ezam bin Mohd Nor* [2001] 3 MLJ 372; [2002] 5 CLJ 156.

[14] It is trite that the magistrate in the exercise of his judicial function must be satisfied that there is sufficient information to grant or not to grant the remand. The order of the magistrate authorising the detention of the accused under s 117 of the CPC is a judicial act. See the case of *Zaidi bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases* [2021] 3 MLJ 759 (FC).

[15] Hence the magistrate in the exercise of his discretion must ensure there is an equitable balance between the rights and personal liberty of the accused who has not been proven guilty of an offence against the equally important public interest to have the perpetrator of the offence to be apprehended and dealt with in accordance with the law. This must necessarily include the duty of police to investigate crimes. See the case of *Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop* [2018] 5 MLJ 141 (FC) at p 159 where His Lordship had said as follows:

> [50] In considering an application for a remand order, a magistrate must balance fairly between the right of a personal liberty of an individual who has not been proven guilty of an offence, against the equally important public interest vis a vis the duty of the police to investigate crimes. It involves an exercise of discretion and that discretion must be exercised judicially and is subject to the court's scrutiny *(Hashim bin Saud v Yahaya bin Hasim & Anor* [1977] 1 MLJ 259 *and Chong Fook Kam & Anor v Shaaban & Ors* [1968] 2 MLJ 50). KC Vohrah J in *Re Detention of R Sivarasa & Ors* said:
>
> > Section 117 also requires that there be grounds for believing that the accusation or information is well founded for the police officer to make his application for detention. These grounds, needless to say, are subject to judicial scrutiny.

[16] At the hearing of the remand, a copy of the police diary containing the necessary information as prescribed by s 119 of the CPC would have been transmitted to the magistrate. Should there be any queries or information which the magistrate may require, then the police officer in attendance must be able to answer it. Failure to do so means that the magistrate in the exercise of his discretion is entitled to dismiss the application for remand. The magistrate retains the substantive discretion to consider after reviewing all the relevant documents produced, whether to order a remand, and if ordered, to determine the length of the remand. See the Court of Appeal case of *Leonard Teoh Hooi Leong v Public Prosecutor* [2010] 3 MLJ 373.

[17] In addition to s 117 of the CPC, the magistrate also needs to take into consideration the directions as set out in the Practice Direction dated 10 September 2021 (Arahan Amalan Ketua Hakim Negara Bilangan 11 Tahun

2021) issued by the Chief Justice of Malaysia. This practice direction deals with the procedural matters in court to ensure uniformity in matters concerning remand application under s 117 of the CPC. It is binding on the magistrate courts in so far as it relates to the procedures of a remand application to be conducted by the magistrate. A copy of which is out below:

KETUA HAKIM NEGARA
MAHKAMAH PERSEKUTUAN
MALAYSIA
PUTRAJAYA

CHIEF JUSTICE
FEDERAL COURT
MALAYSIA

PKPMP.PKHN.600-3/3/1

10 September 2021

Hakim Mahkamah Sesyen
Mahkamah Sesyen
Seluruh Malaysia

Majistret
Mahkamah Majistret
Seluruh Malaysia

Timbalan Pendaftar / Penolong Kanan Pendaftar
Mahkamah Tinggi Seluruh Malaysia

Penolong Kanan Pendaftar / Penolong Pendaftar
Mahkamah Rendah Seluruh Malaysia

ARAHAN AMALAN KETUA HAKIM NEGARA
BILANGAN 11 TAHUN 2021
PENGENDALIAN PROSIDING PERMOHONAN REMAN DI BAWAH SEKSYEN 117 KANUN TATACARA JENAYAH

PADA menjalankan kuasa yang diberikan oleh seksyen 107A Akta Mahkamah Rendah 1948 [*Akta 92*], saya, setelah berunding dengan YAA Presiden Mahkamah Rayuan, YAA Hakim Besar Mahkamah Tinggi di Malaya dan YAA Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak, mengeluarkan Arahan Amalan ini bagi mengemas kini tatacara dan memastikan keseragaman amalan berhubung dengan pengendalian prosiding Permohonan Reman di bawah seksyen 117 Kanun Tatacara Jenayah [*Akta 593*] ("KTJ") bagi Mahkamah di seluruh Malaysia seperti yang berikut:

Jalan Sebatikan Aras 5, Precinct 4, 62506 Putrajaya
Tel : 03-88813502 Fax : 03 8881 3507

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PEMAKAIAN ARAHAN AMALAN

2. Arahan Amalan ini terpakai bagi pengendalian prosiding Permohonan Reman di bawah seksyen 117 KTJ di seluruh Malaysia.

B

TAFSIRAN

C

3. Dalam Arahan Amalan ini, melainkan jika konteksnya menghendaki makna yang lain—

D

"Majistret" mempunyai erti yang sama sebagaimana yang diperuntukkan dalam Akta Mahkamah Rendah 1948;

"Permohonan Reman" ertinya apa-apa permohonan yang dikemukakan oleh Pegawai Penyiasat Polis di hadapan Majistret bagi mendapatkan suatu perintah tahanan di bawah seksyen 117 KTJ;

E

"sistem e-Kehakiman" ertinya mana-mana sistem aplikasi Mahkamah yang dibangunkan oleh Pejabat Ketua Pendaftar Mahkamah Persekutuan Malaysia bagi urusan dan prosiding Mahkamah.

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TATACARA PENGENDALIAN PROSIDING PERMOHONAN REMAN DI BAWAH SEKSYEN 117 KANUN TATACARA JENAYAH

4. Selaras dengan peruntukan seksyen 117 KTJ, Pegawai Penyiasat Polis hendaklah memastikan pematuhan kepada perkara-perkara yang berikut:

(a) sebelum Permohonan Reman didengar di hadapan Majistret, dokumen-dokumen yang berikut telah difailkan melalui sistem e-Kehakiman:

(i) Permohonan Reman;

(ii) salinan dari siasatan yang lengkap di bawah seksyen 119 KTJ; dan

(iii) apa-apa dokumen lain yang berkaitan dengan permohonan reman tersebut; dan

(b) orang yang disyaki ("OYDS") dikemukakan di hadapan Majistret.

5. Sebelum pengendalian prosiding Permohonan Reman dimulakan, OYDS hendaklah mengesahkan kepada Majistret perkara-perkara yang berikut:

(a) bagi OYDS yang mempunyai peguam, OYDS telah diberi peluang untuk menghubungi peguamnya; dan

(c) bagi OYDS yang belum melantik peguam, OYDS telah menyatakan hasrat untuk diwakili oleh mana-mana peguam pilihannya.

6. Bagi OYDS yang tidak diwakili oleh peguam atau tidak berkeupayaan untuk melantik peguam, OYDS tersebut akan dimaklumkan oleh Majistret akan hak OYDS untuk mendapatkan khidmat bantuan guaman daripada Yayasan Bantuan Guaman Kebangsaan ("YBGK") sekiranya OYDS memenuhi syarat-syarat yang berikut:

(a) OYDS adalah seorang warganegara; dan

(b) OYDS tidak disiasat di bawah mana-mana undang-undang pencegahan, penculikan dan melarikan orang.

7. Bagi maksud perenggan 5 dan 6, Pegawai Penyiasat Polis hendaklah memastikan bahawa, bagi OYDS yang—

(a) telah melantik peguam, peguam yang mewakili OYDS telah dihubungi;

(b) belum melantik peguam, tetapi berhasrat untuk melantik peguam pilihannya sendiri, peguam tersebut telah dihubungi; atau

(c) berhasrat untuk mendapatkan perkhidmatan peguam YBGK, pihak YBGK telah dihubungi,

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dan peguam tersebut telah dimaklumkan agar hadir bagi tujuan pengendalian prosiding Permohonan Reman tersebut.

B

8. Tertakluk kepada perenggan 7, pengendalian prosiding Permohonan Reman hendaklah ditangguhkan kepada suatu tempoh masa yang munasabah, dalam hari yang sama, bagi membolehkan peguam hadir untuk mewakili OYDS.

C

9. Walau apa pun peruntukan dalam perenggan 8, pengendalian prosiding Permohonan Reman akan diteruskan sekiranya—

D

(a) OYDS tidak mahu diwakili oleh peguam dan/atau enggan mendapatkan khidmat bantuan guaman YBGK; atau

(b) tiada peguam yang hadir setelah tempoh masa munasabah diberikan.

E

10. Semasa mengendalikan prosiding Permohonan Reman, Majistret hendaklah dimaklumkan oleh—

F

(a) Pegawai Penyiasat Polis berkaitan dengan status Permohonan Reman tersebut sama ada ia adalah suatu Permohonan Reman baharu atau lanjutan;

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(b) OYDS berkaitan dengan layanan terhadapnya semasa dalam tahanan pihak polis; dan

(c) OYDS berkaitan dengan keadaan kesihatannya.

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11. Bagi maksud perenggan 10(c), sekiranya Majistret mendapati bahawa OYDS memerlukan rawatan, Pegawai Penyiasat Polis hendaklah memastikan bahawa OYDS tersebut dibawa ke hospital bagi tujuan pemeriksaan dan rawatan yang sewajarnya.

12. Semasa pengendalian prosiding Permohonan Reman, Peguam OYDS hendaklah mengemukakan representasi kepada Majistret.

13. Tanpa menjejaskan kuasa dan budi bicara untuk mempertimbangkan Permohonan Reman serta menetapkan tempoh bagi apa-apa perintah reman yang akan diberikan, Majistret dalam menjalankan kuasanya boleh membuat rujukan kepada keputusan-keputusan kes Mahkamah Atasan yang terkini dan *Bench Book (Criminal Law)* yang dikeluarkan oleh Badan Kehakiman Malaysia yang menyentuh mengenai isu reman.

SUSUNAN KEUTAMAAN BAGI PENGENDALIAN PROSIDING PERMOHONAN REMAN DALAM KETIADAAN MAJISTRET

14. Dalam ketiadaan Majistret, prosiding Permohonan Reman yang melibatkan siasatan berkenaan apa-apa kesalahan jenayah—

(a) yang boleh dihukum dengan hukuman mati atau penjara untuk tempoh 14 tahun atau lebih;

(b) yang melibatkan OYDS yang merupakan individu berprofil tinggi;

A

(c) di bawah Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [*Akta 694*]; dan

B (d) yang disifatkan sebagai berkepentingan awam,

hendaklah dikendalikan oleh Majistret *ex-officio* mengikut keutamaan seperti yang berikut:

C

(a) Hakim Mahkamah Sesyen;

(b) Timbalan Pendaftar Mahkamah Tinggi di Malaya (bagi Permohonan Reman di Semenanjung Malaysia sahaja);
D

(c) Penolong Kanan Pendaftar Mahkamah Tinggi di Malaya (bagi Permohonan Reman di Semenanjung Malaysia sahaja);

E

(d) Penolong Kanan Pendaftar Mahkamah Rendah; atau

(e) mana-mana pegawai lain seperti yang disenaraikan di bawah Jadual Keempat Akta Mahkamah Rendah 1948.
F

LOKASI DAN HARI PENGENDALIAN PROSIDING PERMOHONAN REMAN
G

15. Semua prosiding Permohonan Reman hendaklah dikendalikan—

H

I

(a) di Mahkamah atau di mana-mana pusat tahanan yang telah diwartakan untuk tujuan reman; dan

(b) pada setiap hari termasuk hari cuti hujung minggu dan cuti umum.

TARIKH PERMULAAN KUAT KUASA

16. Arahan Amalan ini mula berkuat kuasa pada 15 September 2021.

PEMBATALAN

17. Arahan Amalan Ketua Hakim Negara Bil. 3/2003 Perintah Penahanan di bawah Seksyen 117 Kanun Prosedur Jenayah (KPJ) dan perenggan 2A Pekeliling Ketua Pendaftar Bil. 1 Tahun 2012 (Garis Panduan Reman dan Pengendalian Kes-Kes Jenayah Selaras Dengan Penubuhan Yayasan Bantuan Guaman Kebangsaan) adalah dibatalkan.

TUN TENGKU MAIMUN BINTI TUAN MAT
Ketua Hakim Negara
Istana Kehakiman
Putrajaya

s

[18] A perusal of the Arahan Amalan 11/2021 shows that where it concerns the role and duties of the police, the words used to describe the police are pegawai penyiasat polis (investigating police officer), see paras 4, 7 and 10 of the Arahan Amalan 11/2021. However, in s 117 of the CPC the words used are

pegawai polis yang membuat penyiasatan (police officer making the investigation). Since the term pegawai penyiasat polis is not defined in Arahan Amalan 11/2021 or CPC, it should be given its natural meaning of a police officer who has conduct of the investigation. The duties of the pegawai penyiasat polis as in the Arahan Amalan 11/2021 are as follows:

(a) to file a complete copy of the investigating diary as in s 119 of the CPC and any other relevant document before the hearing of the application (para 4);

(b) to determine whether the accused has his/her own legal representation or wishes to engage the services of a lawyer from YBGK and to inform the lawyer accordingly (para 7); and

(c) to inform the magistrate about the status of the remand, namely whether the remand application is a new application or application to extend the remand (para 10).

[19] Hence so long as the above mentioned duties are fulfilled by an investigating police officer, there is no requirement that the same investigating police officer who has conducted the investigation should also be the one to appear before the magistrate during the hearing of the application.

[20] In fact in s 28 of the CPC, it is provided that the police officer who is making the arrest has to send or take the person arrested before a magistrate within 24 hours from time of arrest. See s 28 of the CPC below:

> Section 28 How person arrested is to be dealt with and detention for more than twenty-four hours.
>
> (1) A police officer making an arrest without a warrant shall without unnecessary delay and subject to the provisions herein as to bail or previous release take or send the person arrested before a Magistrate.
>
> (2) No police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable.
>
> (3) Such period shall not in the absence or after the expiry of a special order of a Magistrate under section 117 exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate.

[21] Again the emphasis is on the rights of the accused to be brought before the magistrate as soon as it is clear that the detention would exceed 24 hours from time of arrest. This is to safeguard the rights of the accused as enshrined in art 5 of the Federal Constitution. This need not necessarily be done by the same police officer, whether it is the investigating officer or arresting officer, so long as the rights of the accused are not affected.

[22] This issue of whether it needs to be the same investigating police officer who has conducted the investigation to also be present before the magistrate in the remand application has been raised and dealt with in two High Court decisions. I shall now proceed to deal with it.

(a) *Chong Yong Yew v Public Prosecutor* [2010] 6 CLJ 938:

(i) the applicant was arrested for being involved in the stealing of scrap metal from Pelabuhan Tanjung Pelepas under s 379 of the Penal Code ('the PC') as well as cheating by under-declaring the weight of the scrap metal under s 420 of the PC. The investigating officer was Sjn/PB Mohd Affendi Kasidi;

(ii) an application for remand was made to the magistrate. At the hearing of the remand application, SM/PB Alias who was the assistant investigating officer appeared instead of Sjn/PB Mohd Affendi Kasidi. Various objections to the application were raised by the accused counsel before the magistrate. The objections were dismissed and the remand of four days was granted by the magistrate. The applicant was unhappy with the decision and filed a revision of the decision under s 323 of the CPC. Among the objections raised before the court was whether the attendance of a representative of the investigating officer and not the investigating officer himself in the remand proceeding is in breach of s 117 of the CPC; and

(iii) the learned judge held that the word investigating officer in s 117 of the CPC should not be read literally. So long as the representative of the investigating officer including the assistant investigating officer has personal knowledge of the facts and steps taken and to be taken in the investigation, he/she can appear in the remand application. Further there was a directive from JSJ Bukit Aman which gave the investigative power including the power to arrest to the investigative officer as well as the assistant investigative officer.

(b) *Quek Qin Long dan lain-lain lwn Pendakwa Raya* [2025] 7 MLJ 264:

(i) the accused together with four others were arrested on suspicion of stealing a truck pursuant to a Pelangi police report No 003716/2024. On 22 May 2024, at the hearing of the remand application where Sjn Muhammad had appeared on behalf of the police instead of Sjn Micheal who was the investigating officer in charge of the investigation, the magistrate granted a two days remand against all five accused. On 23 May 2024, at the hearing of the application to extend the initial two days remand, the magistrate dismissed the application;

(ii) the counsel for the five accused who was unhappy with the first remand order granted on 22 May 2024 filed a revision under s323(1) of the CPC to the High Court against the remand order. Among the objections raised by the accused's counsel, is the issue of whether in an application for remand, the officer making the investigation can be represented by any one or the replacement investigating officer? and

(iii) the learned judge held that since an application for remand concerned the liberty of an individual, s 117 of the CPC should be interpreted strictly. After going through the requirements as set out in s 117(3) of the CPC and s 119 of the CPC, he opined that the police officer who is making the investigation must be the same police officer to appear before the magistrate in the remand application. The learned judge went on to state that the Arahan Amalan 11/2021 also requires the same investigating police officer to appear before the magistrate in the remand application. As such the replacement investigating police officer does not have locus to attend in the remand application and the first remand order granted on 22 May 2024 was invalid.

[23] In the interpretation of s 117 of the CPC, the court should adopt the purposive approach. After all, even in cases involving the interpretation of the articles of the Federal Constitution, the Federal Court has adopted the purposive approach. See the case of *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Anor* [2002] 2 MLJ 11 (FC).

[24] The purposive approach has also been used by Court of Appeal in the recent case of *Azinal Sdn Bhd v Jannath Gani & Ors and other appeals* [2024] 2 MLJ 526 at p 536:

> [21] Now, apart from the debate on the nature of the right of appeal (whether substantive or procedural) the parties failed to consider the manner and method that statutes ought to be read or interpreted. Indeed, a literal interpretation of a statute is only BUT ONE method out of numerous other valid methods of statutory interpretation.
>
> [22] One of the celebrated methods of statutory interpretation would be the PURPOSIVE APPROACH to statutory interpretation. This purposive approach becomes exceedingly necessary and relevant, when the literal reading of the act (notwithstanding principal or amendment act) would lead to an undesirable meaning or effect that flouts the legislative intent of parliament or the provision.

[25] As pointed out by the Federal Court in *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd* the purposive

approach has been given statutory recognition by Parliament by enacting s 17A of the Interpretation Acts 1948 and 1967 (Act 388) which reads:

> Section 17A Regard to be had to the purpose of Act.
>
> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[26] In applying the purposive approach to our case, the court has to consider the purposes for which s 117 of the CPC was enacted. The wordings of s 117(1) of the CPC are verbatim as in s 117(1) of the Criminal Procedure Code of the Federated Malay States (FMS Cap 6) except for the word 'immediately' and 'produce' which replace the word 'forthwith' and 'forward' in the s 117(1) of the FMS. Cap 6 respectively.

[27] With effect from 1 March 2017, s 117 of the CPC was amended pursuant to Act A1521 by adding s 117(1A) of the CPC to allow the public prosecutor to appear in any remand application which reads as follows:

> Section 117 of the Code is amended by inserting after subsection (1) the following subsection:
>
> (1A) The Public Prosecutor may appear in any application made under this section.

[28] As noted in the Hansard, the explanation given by the Minister to Parliament on the amendment of s 117 of the CPC by incorporating s 117(1A) of the CPC, was as follows:

> Tuan Yang di-Pertua, beberapa Ahli Yang Berhormat telah menyatakan bahawa pindaan kepada seksyen 117 yang membenarkan Pendakwa Raya untuk hadir dalam prosiding reman dikhuatiri akan menyebabkan tiada pengasingan kuasa antara peranan sebagai penyiasat, pendakwa dan hakim.
>
> Kehadiran Pendakwa Raya adalah bergantung kepada jenis kes yang disiasat terutamanya bagi kes-kes kepentingan awam dan negara. Tujuan kehadiran Pendakwa Raya atau Timbalan Pendakwa Raya yang diberi kuasa ialah untuk memastikan terdapat alasan yang mencukupi di sisi undang-undang untuk tahanan reman dibuat dalam tempoh reman yang diperlukan.

[29] Hence as stated in the explanation in Hansard, the amendment to allow the appearance of the public prosecutor was necessary to safeguard the interest of the public and country. It is timely to remind ourselves that the right of the public to feel safe and secure in their surroundings must be given due recognition as well. As aptly said in the case of *Hashim bin Saud v Yahaya bin Hashim & Anor* [1977] 2 MLJ 116 (FC) where His Lordship Raja Azlan Shah FCJ (as His Lordship then was) had said at p 118:

> ... But justice does not mean only for the accused; it also means the interests of the State, and not enough is paid to the interests of the State. We have a shocking prevalence of crime, and of crimes of violence, infractions of the plainest requirements of civilised society about which there is no debate. Our capacity to protect life and property itself is in question. There is a manifest failure to secure, through an adequate administration of our criminal laws an appropriate punishment of crimes, the deterrent effects which are in large part the object of these laws.

[30] By allowing a police officer who is duly authorised by his superior officers to appear in the remand proceeding as provided for in s 20 of the Police Act when the original police officer could not attend does not in any way detract from the purpose of s 117 of the CPC nor in anyway affect the rights of the accused.

> Section 20 General duties of police officers.
>
> (1) Every police officer shall perform such duties and exercise such powers as are by law imposed or conferred upon a police officer, and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his superior officers in the Force.

[31] However in s 110(3) of the CPC where the police officer has deputised his subordinate officer under s 110 of the CPC, the deputised subordinate officer can not use any of the powers given by ss 111, 112, 116 and 117 of the CPC:

> Section 110 Procedure where seizable offence suspected.
>
> (3) Where a police officer exercises the power of deputation given by subsection (1) the subordinate officer so deputed shall not be entitled to use any of the powers given by sections 111, 112, 116 and 117.

[32] At all times the purpose of the remand as in s 117 of the CPC is to detain the accused for such a period of time as allowed by the magistrate pending completion of the investigation subject to the conditions as imposed by s 117(1) of the CPC. The purpose of the remand would still be served by allowing the appearance of another police officer who is authorised to appear as the magistrate must be satisfied that there is a nexus between the investigation and the detention sought for. After all, failure on the part of the police officer to address the concern of the magistrate would result in the remand order not being granted or a shorter remand period given.

[33] Hence is there any injustice caused if the police officer making the investigation did not attend the remand application and instead another police officer attended on his behalf? In other words, is the accused's right affected by the non-attendance of the police officer making the investigation? The answer

must surely be 'No'. I fail to see how the rights of the accused as provided in art 5 of the Federal Constitution or s 117 CPC were affected.

[34] For reasons set out above, I allowed the revision. It can be seen that the purpose of s 117 is not hindered by the appearance of a police officer other than the investigating officer duly authorised by his superior as long as the police officer is knowledgeable of the circumstances of the remand and is able to answer the magistrates queries satisfactorily.

Revision application allowed.

Reported by Ashok Kumar